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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3021-WQH
16)
17 Plaintiff,) DATE: March 18, 2008
18) TIME: 2:00 p.m.
19 v.)
20) GOVERNMENT'S NOTICE OF PROPOSED
21 PEDRO CRUZ-TERCERO,) EXPERT TESTIMONY
22)
23 Defendant.) TOGETHER WITH MEMORANDUM OF
24) POINTS AND AUTHORITIES
25)
26)
27)
28)

11 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through
12 its counsel, Karen P. Hewitt, United States Attorney, and Christopher
13 P. Tenorio, Assistant United States Attorney, and hereby provides its
14 notice of expert testimony. Said notice is based upon the files and
15 records of the case, together with the attached Memorandum of Points
16 and Authorities.

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I.

INTRODUCTION

3 The Government herein provides notice of its intent to present
4 expert testimony in the trial of Defendant Pedro Cruz-Tercero. The
5 Government incorporates by reference the Statement of Facts from its
6 previous response in opposition to Defendant's motions, filed on
7 February 4, 2008.

II.

THE COURT SHOULD ADMIT EXPERT TESTIMONY

A. FINGERPRINT EXPERT

11 The Government hereby gives notice of its intent to offer
12 testimony of a fingerprint expert, Latent Print Examiner David Beers,
13 to identify Defendant as the individual who was previously deported
14 under the same name.

15 If specialized knowledge will assist the trier-of-fact in
16 understanding the evidence or determining a fact in issue, a qualified
17 expert witness may provide opinion testimony on the issue in question.
18 See Fed. R. Evid. 702. Determining whether expert testimony would
19 assist the trier-of-fact in understanding the facts at issue is within
20 the sound discretion of the trial judge. See United States v. Alonso,
21 48 F.3d 1536, 1539 (9th Cir. 1995); United States v. Lennick, 18 F.3d
22 814, 821 (9th Cir. 1994). An expert's opinion may be based on hearsay
23 or facts not in evidence where the facts or data relied upon are of
24 the type reasonably relied upon by experts in the field. See Fed. R.
25 Evid. 703. In addition, an expert may provide opinion testimony even
26 if the testimony embraces an ultimate issue to be decided by the
27 trier-of-fact. See Fed. R. Evid. 704.

28 Here, fingerprint comparisons between Defendant and the

1 individual deported on the documents in the A-File is necessary to
2 prove identity and the prior deportation. Fingerprint comparisons are
3 widely accepted and thus no Daubert hearing is necessary. United
4 States v. Sherwood, 98 F.3d 402, 408 (9th Cir. 1996). Any question
5 regarding the validity of the fingerprint comparison should be left
6 to the jury. See Kennedy v. Collagen Corporation, 161 F.3d 1226,
7 1230-31 (9th Cir. 1998) (noting that faults in an expert's use of a
8 specific methodology go to the weight, not admissibility of the
9 testimony). The Government, therefore, respectfully requests that
10 this Court permit the testimony of its fingerprint expert.

11 **B. A-FILE CUSTODIAN**

12 The Government also intends to present testimony from A-File
13 Custodian, Senior Patrol Agent Victor Vega, regarding Defendant's A-
14 file and the context and meaning to documents contained therein. The
15 custodian will seek to testify about standard record keeping and
16 administrative procedures of Immigration authorities. Further, the
17 Government will present the custodian's testimony regarding the
18 standardized procedures employed in immigration proceedings and
19 immigration record keeping. The custodian will have direct experience
20 and knowledge of these procedures. See United States v. Loyola-
21 Dominguez, 125 F.3d 1315, 1317 (9th Cir. 1997) (agent "served as the
22 conduit through which the government introduced documents from INS'
23 Alien Registry File".) The Government, therefore, respectfully
24 requests that this Court permit the testimony of its A-file Custodian.

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III.

CONCLUSION

Based on the foregoing, the Court should admit the Government's proffered expert testimony.

DATED: March 5, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s / Christopher P. Tenorio
CHRISTOPHER P. TENORIO
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 07CR3021-WQH
Plaintiff,) **CERTIFICATE OF SERVICE**
v.)
PEDRO CRUZ-TERCERO,)
Defendant.)

IT IS HEREBY CERTIFIED that:

12 I, CHRISTOPHER P. TENORIO, am a citizen of the United States and
13 am at least eighteen years of age. My business address is 880 Front
14 Street, Room 6293, San Diego, California 92101-8893.

15 I am not a party to the above-entitled action. I have caused
16 service of **GOVERNMENT'S NOTICE OF EXPERT WITNESSES** on the following
17 party by electronically filing the foregoing with the Clerk of the
18 District Court using its ECF System, which electronically notifies
19 them:

20 Christian De Olivas, Esq.

21 I declare under penalty of perjury that the foregoing is true and
22 correct.

23 Executed on March 5, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/Christopher P. Tenorio
CHRISTOPHER P. TENORIO
Assistant U.S. Attorney